

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**TODD J. KOHL,**

**Plaintiff,**

**and**

**Case No. 16-CV-1021**

**GOLDEN RULE INSURANCE COMPANY,**

**Involuntary Plaintiff,**

**vs.**

**WERNER CO., NEW WERNER CO.,  
NEW WERNER HOLDING CO. (DE), INC.,  
BB INSURANCE COMPANY,**

**Defendants.**

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**DECISION AND ORDER ON DEFENDANTS'  
MOTION TO COMPEL EXPERT DISCOVERY**

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The defendants have moved to compel production of five email correspondances between plaintiff's counsel and plaintiff's expert, Dennis Skogen. (Docket # 42.) The plaintiff opposes the motion, arguing that the emails are privileged pursuant to Fed. R. Civ. P. 26(b)(4)(C). (Docket # 45.) The plaintiff provided me copies of the five emails for *in camera* review. After reviewing the emails, I find that the plaintiff must provide the defendants copies of the December 1, 2017 email (with the attachment), the October 18, 2017 email (with the attachment), the October 16, 2017 email (with the attachment), and the September 11, 2017 email (with the attachment).

Communications between a party's attorney and expert witnesses are protected under Fed. R. Civ. P. 26(b)(3)(A) and (B); however, the rule does not protect communications that: (1) relate to compensation for the expert's study or testimony; (2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (3) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed. Fed. R. Civ. P. 26(b)(4)(C)(i)-(iii). After reviewing the withheld emails, I find that the October 16, 2017 email falls under Rule 26(b)(4)(C)(i) and the December 1, 2017, October 18, 2017, and September 11, 2017 emails fall under Rule 26(b)(4)(C)(ii). Thus, the plaintiff is ordered to produce those emails.

#### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the defendants' motion to compel (Docket # 42) is **GRANTED IN PART AND DENIED IN PART**. The plaintiff is ordered to produce copies of the December 1, 2017 email (with the attachment), the October 18, 2017 email (with the attachment), the October 16, 2017 email (with the attachment), and the September 11, 2017 email (with the attachment).

Dated at Milwaukee, Wisconsin this 17<sup>th</sup> day of April, 2018.

BY THE COURT:

s/Nancy Joseph  
NANCY JOSEPH  
United States Magistrate Judge